



COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

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Robert G. Burnley
Director

Gerard Seeley, Jr.
Piedmont Regional Director

**WASTE MANAGEMENT BOARD ENFORCEMENT ACTION
ORDER BY CONSENT
ISSUED TO
Wako Chemicals USA, Inc.
EPA ID Number VAD988170445**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Waste Management Board and Wako Chemicals USA, Inc. for the purpose of addressing certain alleged violations of the Virginia Waste Management Act and the Virginia Hazardous Waste Management Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.

6. "Wako" means Wako Chemicals USA, Inc., a corporation certified to do business in Virginia and its affiliates, subsidiaries, and parents.
7. "Facility" means the Wako Chemicals USA, Inc. chemical manufacturing facility located at 1600 Bellwood Road, Chesterfield County, Virginia.
8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. "VHWMR" means the Virginia Hazardous Waste Management Regulations 9 VAC 20-60-12 *et seq.*

SECTION C: Findings of Fact

1. Wako owns and operates a chemical manufacturing facility in Chesterfield County, Virginia. This facility is a large quantity generator of hazardous waste.
2. On July 9, 2004, DEQ conducted an inspection of Wako. The following violations were noted during the inspection:
 - Failure to conduct annual refresher training for all employees with hazardous waste responsibilities, as required by 40 CFR 262.34(a)(4) [as referenced by 9 VAC 20-60-262] and 40 CFR 265.16(a)(1), 40 CFR 265.16(a)(3), and 40 CFR 265.16(d)(3) [as referenced by 9 VAC 20-60-265].
 - Failure to conduct daily inspections of hazardous waste tanks in accordance with 40 CFR 265.195(a) [as referenced by 9 VAC 20-60-265].
 - Failure to maintain satellite accumulation areas in accordance with 40 CFR 262.34(c)(1) [as referenced by 9 VAC 20-60-262].
 - Failure to properly assess tank integrity; and, failure to properly document and handle tank damage, as required by 40 CFR 265 *et seq.* [as referenced by 9 VAC 20-60-265].
3. On August 23, 2004, a Notice of Violation (NOV) No. 2004-08-PRO-602 was issued for the above violations.
4. On September 8, 2004, the facility met with DEQ to discuss this NOV. Wako cooperated fully in providing additional information to DEQ.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted in Va. Code § 10.1-1455 orders Wako and Wako agrees to perform the actions described in Appendix A of this Order. In addition, the Board orders Wako and Wako voluntarily agrees to pay a civil charge of \$1,600

within 30 days of the effective date of the Order in settlement of the violations cited in this Order. When making payment, Wako shall reference this Order and shall include its Federal Identification Number. Payment shall be made by check payable to the "Treasurer of Virginia," deliverable to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Wako, for good cause shown by Wako, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Wako by DEQ on August 23, 2004. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Wako admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Wako consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Wako declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Wako to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as

appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Wako shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Wako shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Wako shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Wako. Notwithstanding the foregoing, Wako agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Wako. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Wako from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Wako voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 25th day of January, 2005.

Robert G. Burnley, Jr. (for)
Robert G. Burnley, Director
Department of Environmental Quality

Wako, Inc. voluntarily agrees to the issuance of this Order.

By: Daniel E. Chood

Date: DECEMBER 10, 2004

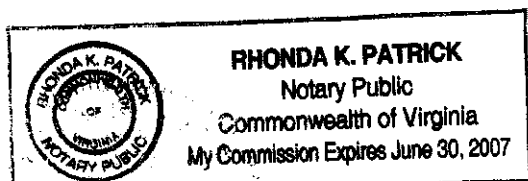
Commonwealth of Virginia

City/County of Chesterfield

The foregoing document was signed and acknowledged before me this 13th day of
December, 2004, by Rhonda K. Patrick, on behalf
(name)
of Wako, Inc.

Rhonda K. Patrick
Notary Public

My commission expires: June 30, 2007



APPENDIX A

SCHEDULE OF COMPLIANCE

1. Within 180 days of the execution of this Order, Wako shall close the damaged hazardous waste tank in accordance with the applicable closure standards at 40 CFR 262.34, 265.111, 265.114, and 265.197.
2. Wako shall submit all documentation related to the tank closure to:

Vernon C. Williams
Department of Environmental Quality
4949-A Cox Road
Glen Allen, Virginia 23060